

December 10, 2003

Cynthia Walker
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Dear Ms. Walker:

On behalf of the Pure UNE-P CLEC Coalition, we wish to comment briefly on the recent Loops and Transport Workshop that the Commission sponsored. The ILECs used the Workshop as a forum to complain about an alleged lack of data. These complaints are disingenuous in view of the facts that (1) the ALJ opened discovery in this case by a Procedural Ruling issued on August 29, 2003; (2) the ALJ advised the ILECs of the November 20 deadline for filing opening testimony that "shall identify the loops (by customer location) and transport (by route) where the ILECs seek to challenge the national findings of impairment..." in a Procedural Ruling issued on October 8, 2003; (3) SBC has issued data requests to a limited number of CLECs, but has filed no Motions to Compel responses to those requests; and (4) Verizon has issued no substantive discovery of its own. In sum, although the ILECs have had three and one-half months in which to pursue discovery on factual matters pertinent to any challenge to the FCC's national findings of CLEC impairment without access to the loop and transport UNEs, they have neither used the processes available to them under the Commission's Procedural Rules nor filed any motions seeking additional time in which to develop their cases on the loop and transport issues in this case. In light of their having slept on their rights, the ILECs are not entitled to any exceptions to the very clear directives in the ALJ's various Procedural Rulings.

Most important, the Commission should not – simply because of the ILECs' informal complaints, unsupported by any acts of their own in reliance on available Commission procedures – make allowances or give special quarter to the ILECs. As I stated at the Workshop, the goal of this proceeding is the (somewhat belated) implementation of the Telecom Act, for the benefit of California consumers, and not the elimination of UNEs, as the ILECs would have it. Consequently, if the ILECs wish to advocate for a change in the schedule of this case, they should be required to do so by Motion, so that all parties to this case may be heard regarding their arguments, and the matter can be decided based on the facts as they actually exist (and not based on the sort of unfounded allegations the ILECs made in the Workshop) and the law that is relevant to the

issues underlying this case -- all as judged by the impartial arbiter assigned to this matter, the Administrative Law Judge.

As you correctly reflected in the Staff Workshop Report, the carriers belonging to the Pure UNE-P CLEC Coalition are prepared to proceed on the schedule the ALJ set out in his October 8 Procedural Ruling. The ILECs have made their bed, and should now be required to lie in it.

Sincerely,

Glenn Stover

Counsel for the Pure UNE-P CLEC Coalition:

Anew Telecommunications Corp. d/b/a Call America, BullsEye Telecom,
DMR Communications, Sage Telecom, TCAST Communications, and Tri-M
Communications, Inc. d/b/a TMC Communications